IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7008 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

J.C.SURATIA-DECEASED BY HIS HEIR--N.J. SURATIA

Versus

CHIMANBHAI MADHABHAI,SINCE DECEASED THROUGH HEIRS & L.R.

Appearance:

1. Special Civil Application No. 7008 of 1990

MR AJ PATEL for Petitioner No. 1

MR JIVANLAL G SHAH for Respondent No. 1

..... for Respondent No. 1/1

MR HARSHAD J SHAH for Respondent No. 1/1/1-1/3

GOVERNMENT PLEADER for Respondent No. 2

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 22/02/2002

ORAL JUDGEMENT

1. Joravarsinh Chandubava Suratia-petitioner has filed this petition challenging the order dated 26.4.1990 passed by the Deputy Secretary (Appeal), Revenue Department, Gujarat State, Ahmedabad, in Revision No. SRD/Con./Vadad/32 of 1988 under Section 9(2) of the Bombay Fragmentations and Consolidation of Holdings Act, 1947 (hereinafter referred to as "the Act").

2. The facts giving rise to this petition are as under:

2.1 There is a land admeasuring 8 acres 4 gunthas situated at village Chandpur, taluka Sankheda, District Baroda. It has been stated in the petition that the deceased Joravarsinh Chandubava Sutaria, father of the present petitioner, purchased the land admeasuring 4 acres 5 gunthas out of Survey No. 37/1, admeasuring 8 acres 4 gunthas of village Chandpur, Taluka Sankheda, District Baroda by registered Sale Deed on 29.1.1973 from erstwhile owner of the said land.

2.2 Thereafter, the deceased Joravarsinh purchased land admeasuring 2 acres out of the aforesaid land by a registered sale deed dated 14.4.1975. It was further stated that in order to complete the purchase of the entire block, the deceased Joravarsinh also agreed to purchase the remaining part of the said land by an agreement to sale dated 15.5.1976 in respect of the land admeasuring 1 acre 39 gunthas out of the same Survey No. 37/1 coupled with possession.

2.3 It has been stated in the petition that the petitioner purchased the entire block of the land in dispute and has been in possession thereof since the dates of respective transactions. Thereafter, the deceased Joravarsinh died and after his death the petitioner became owner of the said land. It appears that respondent No. 1 initiated proceedings under the provisions of the Act. Respondent No. 1 filed an application dated 26.2.1979 to Mamlatdar, Kheda, under Section 9 of the Act. Pursuant to the said application, the Deputy Collector, Chhotaudepur held inquiry and came to the conclusion by his judgement and order dated 22.1.1980 that there was no breach of any provisions of the Act and therefore proceedings were required to be dropped. A copy of the said order has been annexed at Annexure-D to the petition.

2.4 Respondent No. 1 filed Revision Application before the Deputy Secretary (Appeals), Revenue Department on 9.12.1988. The Deputy Secretary (Appeals), Revenue

Department, in the Revision Application filed by respondent No. 1 was pleased to allow the said Revision Application. The Revisional Authority held that because of Sale of fragmentation of the land earlier entry of the sale has not been approved and prior permission regarding sales has not been taken.

2.5 Being aggrieved and dissatisfied with the said action the present petitioner has filed this petition before this Court on 17.9.1990. When the matter was placed for hearing before this court on 19.9.1990 this court admitted the matter and parties were directed to maintain the status quo. Now the matter reached hearing before me. Mr. S.R. Patel, learned counsel for the petitioner appeared in this behalf. He has invited my attention to the relevant provisions of the Act and also record of the case. Before he has raised the following contentions:

(i). "That the Deputy Secretary committed an error is not appreciating that the revision application filed by respondent No. 1 was heavily time barred, inasmuch as the order impugned in the said revision application was passed in the year 1980, whereas the revision application was filed only in 1990.

(ii). Alternatively, the petitioner also submitted that the Deputy Secretary ought to have appreciated that the order passed by her after the lapse of 8 years would amount to an order passed in arbitrary exercise of power; and, therefore, the same is liable to be quashed and set aside.

(iii). That the Deputy Secretary committed an error in ignoring the ratio laid down by this Honourable Court in its various decisions cited before the Deputy Secretary.

3.1 In support of his first contention the learned counsel for the petitioner has relied on the judgement of the Apex Court in the case of STATE OF GUJARAT VS. PATEL RAGHAV AND ORS. reported in 1969 (10 G.L.R. 992). In paras 12 and 13, the Hon'ble Supreme Court has observed as follows:

"Para 12 - The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Sec. 211, but it seems to us plain that this power

must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the .... of the order which is being revised.

Para 13 - It seems to us that Sec. 65 itself indicates that the length of the reasonable time within which the Commissioner act under Sec. 211. Under Sec. 65 of the Code if the Collector does not inform the applicant to his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sec. 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961, i.e. more than a year after the order and it seems to us that this order was passed too late."

3.2 He has also relied on the judgement of the Hon'ble Apex Court in the case of MOHAMAD KAVI MOHAMAD AMIT VERSUS FATMABAI IBRAHIM reported in 1997(6) SCC 71 in which at para 2 the Hon'ble Supreme Court has observed thus:

"But according to him even without going into that question the impugned order can be set aside on the ground that suo motu power has not been exercised within a reasonable time. Sec. 84-C of the Act does not prescribe any time for initiation of the proceeding. But in view of the settled position by several judgements of this Court that wherever a power is vested in a statutory authority without prescribing any time limit, such power should be exercised within a reasonable time. In the present case the transfer took place as early as in the year 1972 and suo-motu enquiry was started by the Mamlatdar in September, 1973. If sale deeds are declared

to be invalid the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. In this connection, on behalf of the appellant reliance was placed on a judgement of Justice S.B. Majmudar (as he then was in the High Court of Gujarat) in State of Gujarat V. Jethamal Bhagwandas Shah (Spe. WA NO. 2770 OF 1979) disposed of on 1.3.1990, where in connection with Sec. 84-C itself it was said that the power under the aforesaid Section should be exercised within a reasonable time. This Court in connection with other statutory provisions, in the case of State of Gujarat Vs. Patil Raghav Natha (1969) 2 SCC 187: (1970) 1 SCR 335 and in the case of Ram Chand Vs. Union (1994) 1 SCC 446 of India has impressed that where no time limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo-motu power under Sec. 84-C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly, the appeal is allowed. The impugned orders are set aside. No costs."

3.3 The learned counsel for the petitioner has relied on the judgement in the case of RAVJIBHAI M PATEL VS. M.H. PATEL in Special Civil Application No. 6905 of 1988 decided on 18.4.2000 (Coram: K.M. Mehta, J). In that case this court after considering the aforesaid judgement in para 9 has observed thus:

"In my view, therefore, after considering the facts, contentions raised by the petitioner and the judgement of the Apex Court, it clearly appears that in this case the land was purchased somewhere in 1975, whereas notices under the provisions of the Act were issued in the month of March, 1982, and therefore, the power of issuance of notices has not been exercised within a reasonable time and the judgement of the Hon'ble Supreme Court, cited by the learned advocate for the petitioner i.e. Mohamad Kavi Mohamad Amit (supra) clearly applies in this case, and therefore, notices were issued beyond the reasonable time. In view of the same, only on this, I quash and set aside the order dated 28th September, 1984 passed by the respondent No. 2

and also order dated 28th July, 1988 passed by the Additional Chief Secretary passed in Revisional matters and thereby this Court should issue a writ of certiorari quashing and setting aside both the orders in this behalf."

3.4 I have considered the facts of the case as well as the judgements cited by the learned counsel for the petitioner. In this case the land was purchased by father of the petitioner in the year 1973, 1975 and 1976. Thereafter, the proceedings were initiated and ultimately the Deputy Collector by his judgement dated 22.1.1980 held that there was no breach of provisions of the Act. Thereafter, in 1988 respondent No. 1 initiated revisional proceedings. In view of the same, the revisional Authority has entertained the Revision Application after eight years from the date of the order of the Deputy Collector. In view of the judgement of the Hon'ble Apex Court in the case of State of Gujarat Vs. Patel Raghavnath & Ors. (supra) and also judgement of the Hon'ble Supreme Court in the case of Mohamad Kavi Mohamad Amit Versus Fatmabai Ibrahim (supra) and also judgement of this court in Ravjibhai M. Pate Vs. M.H. Patel (supra), I am of the opinion that the order passed by the authority below requires to be quashed and set aside on the ground that the Revisional Authority has entertained the Revision Application after a long period of eight years.

3.5 In my view the Revisional Authority has no jurisdiction to decide the Revision Application after a period of eight years particularly when there are no convincing reasons given by the authority in this behalf. Over and above on merits the Revisional Authority has not given any cogent and convincing reasons. In my view the petitioner has been able to prove that the entire land was purchased by the father of the petitioner and there is no breach of provisions of the Act.

3.6 The learned counsel for the petitioner has submitted that deceased Joravarsinh Chandubhava Sutaria, father of the present petitioner purchased land admeasuring 4 acres 5 gunthas out of survey No. 37/1,admeasuring 8 acres 4 gunthas of village Chandpur, Taluka Sankheda, Dist. Vadodara by a registered sale deed dated 29.1.1973 from the erstwhile owner of the said land. It was further submitted that the deceased Joravarsinh thereafter purchased land admeasuring 2 acres out of the aforesaid land by a registered sale deed dated 14.4.1975. The

petitioner further submitted that in order to complete purchase of the entire block, deceased Joravarsinh also agreed to purchase the remaining part of the said land and by an agreement to sell dated 15.5.1976 in respect of the land admeasuring 1 acre 39 gunthas out of the same survey number coupled with possession.

3.7 In view of the aforesaid facts, the learned counsel for the petitioner submitted that respondent No. 1 has sold land to father of the petitioner and therefore to that extent he has become sellar and the seller has no right to challenge the proceedings under the provisions of the Act after receiving the consideration. The learned counsel for the petitioner has relied on the judgement of this court in the case of SMT. RATNAPRABHABAI VS. TULSIDAS V. PATEL reported in 23(2) GLR 213. He has also relied on the judgement of a Division Bench of this court (Coram: K.G. Balakrishnan, C.J. (as he then was) and J.N. Bhatt, J) in Letters Patent Appeal No. 1153 of 1998 in Special Civil Application No. 6265 of 1998 in which the court observed as under:

> "We heard the appellants' counsel. The present appeal is filed by the legal heirs of the original transferor. The counsel contended that the sale deed executed contrary to the provisions contained in the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 is a void transaction and, therefore, no rights will flow from such a transaction and the Collector was justified in setting aside the same even after a period of 21 years. It is important to note that the present challenge is made by the appellants, who are none other than the legal heirs of the original transferor. The original transferor accepted consideration and must have made the transferees believe that the transaction was in accordance with law. Therefore, the present appellants, who are the legal heirs of the original transferors, cannot be heard to say that they are entitled to the benefit of such a transaction, which was opposed to law. The learned single judge was justified in not interfering with the order passed by the revisional authority. We find no reason to interfere in appeal and the same is accordingly dismissed."

4. In view of the aforesaid discussion, I substance in both the grounds raised by the learned counsel for the

petitioner and therefore the petition is required to be allowed. The petition is allowed. The impugned order passed by the revisional authority is quashed and set aside and the order of the Deputy Collector is confirmed. Rule is made absolute. No order as to costs.

(K.M. MEHTA, J)

(pkn)